

## **803 KAR 1:085. Fringe benefits.**

RELATES TO: KRS 337.505-337.550

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520(1) authorizes the executive director to make administrative regulations he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this administrative regulation is to interpret the prevailing wage and fringe benefit provisions of KRS 337.505 to 337.550.

Section 1. Definitions. (1) "Prevailing wage" is defined pursuant to KRS 337.505(1) and (2).

(2) "Bona fide fringe benefits" means those benefits which are common in the construction industry and established under a standard plan or program.

Section 2. The Basic Hourly Rate of Pay. The basic hourly rate paid shall be that part of a laborer, workman, and mechanic's wage which the executive director would have determined and included in his determination as the portion of the wage in which a cash payment was made directly to the laborer, workman, and mechanic. It shall not include fringe benefits.

Section 3. Rate of Contribution for Fringe Benefits. (1) The executive director is obligated to make a separate finding of the rate of contribution of fringe benefits. Only the amount of contributions for fringe benefits which meets the requirements of KRS 337.505-337.550 shall be considered by the executive director.

(2) The rate of contribution shall be an hourly rate and shall be reflected in the wage determination as an hourly rate.

Section 4. Contribution Irrevocably Made to a Trustee or to a Third Person. (1) Under the fringe benefits provisions of KRS 337.505 the amount of contributions for fringe benefits shall be made to a trustee or to a third person irrevocably.

(2) The third person shall not be affiliated with the employer.

(3) The trustee shall assume the usual fiduciary responsibilities imposed upon trustees by applicable law.

(4) The trust or fund shall be set up in a way that shall prevent the employer from recapturing any of the contributions paid in or in any way diverting the funds to his own use or benefit.

(5) Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this shall not prevent the return to the employer any sums which he had paid in excess of the contributions actually called for by the plan; for example, where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained.

Section 5. Plan or Program. A fringe benefit shall not be eligible for consideration under this part unless:

(1) It provides fringe benefits described in the statute;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the employees affected.

Section 6. Specific Fringe Benefits. (1) Employers may take credit for contributions made under

conventional plans, pursuant to KRS 337.505(2), which are funded under a trust or insurance program.

(2) Where the plan is not the conventional type described in the preceding subsection, it will be necessary for the executive director to examine the facts and circumstances to determine whether they are "bona fide" in accordance with the requirements of the statute. Employers seeking credit for such plans shall request specific permission from the executive director.

(3) KRS 337.505(2) excludes fringe benefits which an employer is obligated to provide under federal, state or local law. These types of fringe benefits shall not receive any credit and shall not be recognized as part of the prevailing wage rate. For example, payment for workers' compensation insurance shall not be considered payments for fringe benefits under the statute.

**Section 7. Meeting Wage Determination Obligations.** An employer may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination in the following ways, by paying:

(1) Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making the contributions for the fringe benefits in the wage determination, as specified therein.

(2) Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making contributions for fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination.

(3) In cash directly to the laborers, workmen, and mechanics the basic hourly rate and by making an additional cash payment in lieu of the required benefits.

**Section 8. Overtime Payments.** (1) The law includes amounts paid by an employer for fringe benefits in the computation of overtime under KRS 337.540(3). In no event shall the rate upon which premium pay for overtime is calculated be less than the amount determined by the executive director as the basic hourly rate. Contributions by employees shall not be excluded from the basic rate upon which overtime is computed; that is, an employee's basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The employer's contributions for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the rate below the basic hourly rate contained in the wage determination.

(2) The statute permits an employer to pay a cash equivalent of any fringe benefits found prevailing by the executive director. Such a cash equivalent would also be excludable in computing the rate upon which overtime is computed. (1 Ky.R. 155; 12-11-74; Am. 20 Ky.R. 3110; 21 Ky.R. 16; eff. 7-7-94; TAm eff. 8-9-2007.)